

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ORANEFO OKOLO, as assignee of
ST. LUKE'S HOSPITAL CONSORTIUM,
Plaintiff,

v.

CROSS RIVER STATE GOVERNMENT,
Defendant.
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**ORDER ADOPTING REPORT
AND RECOMMENDATION**

19 CV 5329 (VB)

Briccetti, J.:

Before the Court is Magistrate Judge Andrew E. Krause's Report and Recommendation ("R&R"), dated November 16, 2022 (Doc. #46), on plaintiff's motion for a default judgment against defendant Cross River State Government ("CRSG") pursuant to Fed. R. Civ. P. 55(b). (Docs. ## 40–41). Judge Krause recommended the Court (i) deny plaintiff's motion for default judgment because plaintiff has not properly served CRSG pursuant to 28 U.S.C. § 1608(a), and (ii) give plaintiff one final opportunity to serve the amended complaint within fourteen days of the Court's final disposition of the R&R.

Plaintiff timely objected to the R&R, objecting only as to the additional time for serving the amended complaint. (Doc. # 46).

For the following reasons, the Court adopts the R&R, except as to Judge Krause's recommendation as to the time for service.

Familiarity with the factual and procedural background of this case is presumed.

DISCUSSION

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Parties may raise objections to the magistrate judge's report and

recommendation, but they must be “specific[,] written,” and submitted within fourteen days after being served with a copy of the recommended disposition, Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1), or within seventeen days if the parties are served by mail. See Fed. R. Civ. P. 6(d).

When a party submits timely objections to a report and recommendation, the district court reviews the parts of the report and recommendation to which the party objected under a de novo standard of review. 28 U.S.C. § 636(b)(1)(C); see also Fed. R. Civ. P. 72(b)(3). The district court may adopt those portions of the recommended ruling to which no timely objections have been made, provided no clear error is apparent from the face of the record. See Wilds v. UPS, Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). The clear error standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. See Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

The Court has reviewed Judge Krause’s thorough and well-reasoned R&R and finds no error, clear or otherwise.

With respect to the time for service, Judge Krause recommended plaintiff be given fourteen days to serve the amended complaint after the Court’s final disposition of the R&R. Plaintiff objected to this recommendation, reasoning that he “does not control how long it will take to get the process from the Clerk of Court to the recipient in Nigeria.” Plaintiff requested instead four business days to ask the Clerk of Court to effect service of process. (Doc. #46).

Judge Krause’s recommended deadline for service is not erroneous. Nonetheless, given the prevalence of international shipping delays, the Court will grant plaintiff sixty days from the date of this Order to serve the amended complaint.

The Court declines to adopt plaintiff’s proposed alternative. Plaintiff has twice asked the Clerk of Court to effect service of process, but on both occasions, he gave the Clerk of Court

deficient mailings. Given this history, the Court is unwilling to set a deadline plaintiff could satisfy merely by sending documents to the Clerk of Court. If plaintiff again fails to strictly comply with 28 U.S.C. § 1608(a), he will not be given another opportunity to serve CRSG.

CONCLUSION

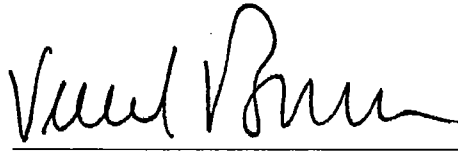
The Court adopts the R&R, except as to Judge Krause's recommendation that the Court give plaintiff fourteen days to serve the amended complaint.

Plaintiff's motion for default judgment is DENIED.

By **February 3, 2023**, which is sixty days from the date of this Order, plaintiff shall serve CRSG in accordance with 28 U.S.C. § 1608. By that same date, plaintiff shall file proof of service on the ECF docket. If plaintiff fails to comply with this Order, or fails to seek an appropriate extension of time to do so, the case will be dismissed without prejudice for failure to prosecute or comply with a court order, pursuant to Fed. R. Civ. P. 41(b).

Dated: December 5, 2022
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge